

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTWOINE BEALER,  
Plaintiff,

v.

WARDEN, *et al.*,  
Defendants.

Case No. 2:23-cv-0284-DC-JDP (P)

ORDER

Pending before the court are plaintiff's motion to proceed with discovery and motion for summary judgment. ECF Nos. 27 & 30. However, because no defendant has been identified or served, and because no scheduling order has issued, both motions are denied without prejudice as premature. Once plaintiff determines the identity of defendants, he shall file a motion to substitute the named individual defendants. After defendants are served, the court will issue a scheduling order, which will include deadlines for discovery and dispositive motions.

Plaintiff has returned to the court subpoenas directed at discovering the identities of the unknown defendants. ECF No. 23. Since plaintiff is not proceeding *in forma pauperis*, the U.S. Marshal will not serve plaintiff's subpoenas for free. *See* 28 U.S.C. § 1915(d); *cf. James v. Scribner*, No. 1:04-cv-5878-LJO-DLB P, 2008 WL 3318879, at \*1 (E.D. Cal. Aug. 11, 2008) ("As plaintiff is proceeding pro se and in forma pauperis, he is entitled to service of the subpoena by the United States Marshal [pursuant to 28 U.S.C. § 1915(d)].").

1 Accordingly, plaintiff must either cause each subpoena to be served himself or bear the  
2 costs of service by the U.S. Marshal. *See* Fed. R. Civ. P. 45(b)(1) (“Any person who is at least 18  
3 years old and not a party may serve a subpoena.”). As for service by the U.S. Marshal, plaintiff is  
4 directed to 28 C.F.R. § 0.114, which sets the fees for such services, including “\$65 per person per  
5 hour for each item served, plus travel costs and any other out-of-pocket expenses.” Within thirty  
6 days, plaintiff shall notify the court that he either will or will not use the U.S. Marshal to serve the  
7 subpoenas. Plaintiff should take note that, if a defendant is not served within the ninety days after  
8 a complaint is filed, the court must, after notice to the plaintiff, dismiss the action without  
9 prejudice. Fed. R. Civ. P. 4(m).

10 Accordingly, it is hereby ORDERED that:

11 1. Plaintiff’s motion to proceed with discovery and motion for summary judgment, ECF  
12 Nos. 27 & 30, are denied as premature.

13 2. Plaintiff shall, within thirty days, notify the court that he will or will not use the  
14 services the U.S. Marshal to serve the subpoenas. If plaintiff chooses to have the U.S. Marshal  
15 serve the subpoenas, he will be obligated to pay the fees as outlined in 28 C.F.R. § 0.114.

16  
17 IT IS SO ORDERED.

18 Dated: May 5, 2025

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20 JEREMY D. PETERSON  
21 UNITED STATES MAGISTRATE JUDGE  
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